

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CRAIG CAMPBELL,)	
)	
Plaintiff,)	
)	Civil Action No. 05-0467
vs.)	
)	
CITY OF NEW KENSINGTON,)	Judge Joy Flowers Conti
DONALD E. BOWERS, MICHAEL J.)	Magistrate Judge Lisa Pupo Lenihan
LANGER, JOHN W. REGOLI, JR.,)	
DOUGLAS J. AFTANAS, FRANK E.)	
LINK, JR., RICHARD JACOBUS,)	
CHARLES KORMAN, AND)	
CHRISTOPHER E. NICHOLS,)	
)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff's complaint was received by the Clerk of Court on April 8, 2005 and was referred to a United States magistrate judge in accordance with the Magistrate Judge's Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

The magistrate judge's Report and Recommendation (Doc. No. 111) filed on May 18, 2009, recommended that defendants' renewed motion for summary judgment (Doc. Nos. 103 & 84) be granted. Service was made on all counsel of record and plaintiff, pro se. The parties were informed that in accordance with the Magistrate Judge's Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrate Judges, that they had ten (10) days to file any objections. Plaintiff filed objections to the report and recommendation, entitled "Response to Document: 108 in Granting Summary Judgment to Defendants" (Doc. No. 115) on August 25, 2009. The court also reviewed plaintiff's objections and supporting documents.

The court finds that plaintiff did not object to the dismissal of defendant Charles Korman and did not adduce evidence that he was personally involved in the claims at issue, and therefore, summary judgment should be granted in his favor. The Report and Recommendation findings and recommendation with respect to defendant Charles Korman will be adopted as the opinion of this court.

With respect to the remaining defendants, the court does not agree with the magistrate judge that summary judgment should be granted. Despite the magistrate judge's order of August 11, 2008, specifically directing defendants to address the issues identified by the court of appeals, defendants failed to address those issues in their renewed motion for summary judgment. Because defendants did not address these issues, and failed to point out to the magistrate judge "that there is an absence of evidence to support the nonmoving party's case[.]" this pro se plaintiff was not put on notice that he was required to come forward with all of his evidence supporting his claims. Celotex Corp. v. Catrett, 477 U.S. 317, 325-26 (1986). The report and recommendation of the magistrate judge is well reasoned and follows the mandate of the court of appeals; however, the issues discussed by the magistrate judge were not discussed in any of the defendants' summary judgment submissions. Because "district courts are widely acknowledged to possess the power to enter summary judgments sua sponte, so long as the losing party was on notice that [he] had to come forward with all of [his] evidence[.]" Celotex Corp., 477 U.S. at 326, the following order is entered:

AND NOW, this 29th day of September, 2009;

IT IS HEREBY ORDERED that defendant Charles Korman's renewed motion for summary judgment at Doc. Nos. 103 & 84 is **GRANTED**.

IT IS FURTHER ORDERED that the remaining renewed motions for summary judgment at Doc. Nos. 103 & 84 are denied without prejudice. This case is referred to the magistrate judge who is directed to issue a rule to show case to plaintiff as to why summary judgment should not be granted in defendants' favor with respect to the claims contained in counts II and III of his Complaint.

/s/ Joy Flowers Conti
Joy Flowers Conti
United States District Judge

cc: Lisa Pupo Lenihan
United States Magistrate Judge

Craig Campbell
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